

## EXTENSION OF THE EXPORT CONTROL ACT

MAY 29, 1965.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PATMAN, from the Committee on Banking and Currency, submitted the following

### REPORT

[To accompany H.R. 7105]

The Committee on Banking and Currency, to whom was referred the bill (H.R. 7105) to provide for continuation of authority for regulation of exports, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass. The amendment is in the nature of a substitute and is shown in *italic type* in the reported bill.

#### Purposes of the Bill

The enactment of the proposed legislation will serve three principal purposes. First, it will extend the Export Control Act of 1949<sup>1</sup> for 4 additional years. Second, it will authorize the administrative imposition of civil monetary penalties not exceeding \$1,000 for violations of the Act. Third, it will furnish the administration with clear legal authority to protect American business firms from competitive pressures to become involved in foreign trade conspiracies against countries friendly to the United States.

#### Need for Legislation

##### EXTENSION OF THE ACT

The Export Control Act furnishes the basic authority for the control of exports to Communist bloc countries. It furnishes authority for restricting the outflow of scarce materials, as well as authority to regulate exports in furtherance of the foreign policy of the United States. There was no controversy over the need for

<sup>1</sup> A history of the Export Control Act of 1949 and a description of the activities currently carried on under its authority are contained in an appendix to this report.

extension of the Act. The extension was limited to a period of 4 years to afford the Congress an opportunity for periodic review.

### CIVIL PENALTY

Under the Act as now in effect, there are no civil or administrative sanctions available for the punishment of violations other than the suspension or revocation of export licenses. Offenders may be prosecuted criminally, but this is a procedure which may not be appropriate to the circumstances. There is a real need for a penalty which is sharp enough to act as a deterrent, but not so severe that a sense of fairness would preclude its use in cases not involving a serious offense.

### THE ARAB BOYCOTT CONTROVERSY

A sharp conflict of competing policy considerations confronted your committee with one of its most delicate assignments in recent memory. After painstaking deliberation, your committee reached what it believes to be a sound and workable resolution, and urges its thoughtful consideration and ultimate adoption by the House.

The basic problem is the continuing effort by the Arab League to involve American business firms and their personnel in the league's boycott of the Israeli nation. All the witnesses were agreed that such efforts on the part of the Arab League were deplorable and contrary to the public policy of the United States, both domestic and foreign. There was also agreement that the situation poses difficult problems for the Government, and that it has thus far found no satisfactory solutions except in individual cases.

### OTHER BILLS CONSIDERED

Your committee gave careful consideration to the proposals embodied in H.R. 627, H.R. 4361, and similar bills which have been introduced by a number of members. These bills, in addition to containing a declaration of policy against boycotts and restrictive trade practices, would *require* the President to issue regulations prohibiting American exporters from taking—

any actions, including the furnishing of information or the signing of agreements—

which would—

have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against another country friendly to the United States.

These bills would leave the administration powerless to weigh other considerations of national policy or to appraise the seriousness of a given situation before taking action.

Administration witnesses testified against these bills in their entirety, contending that the enactment of such legislation would be ineffective in meeting the problem at hand, that it could embarrass the United States in the conduct of foreign relations and could compromise our own programs of economic denial directed against hostile

powers, and that it might even adversely affect the very situation it was intended to alleviate.

#### THE COMMITTEE RECOMMENDATION

The bill which your committee now recommends for passage contains exactly the same declaration of policy as is embodied in the bills referred to above. It also broadens the legal power of the President to enable him to deal specifically with the types of problems which have occasioned those bills, but it does not deprive him of the flexibility to meet such problems in their total context. Your committee believes that it has thus adopted the essential elements of the position of the proponents of those bills—a legislative determination that a serious problem exists and a grant of authority to deal with it—while at the same time giving due regard to the need of the administration for discretion to consider the totality of any given situation and for power to meet it with flexibility. Those on either side of this controversy should be mindful that considerably less palatable alternatives exist than that which your committee hereby reports and earnestly recommends.

#### COMMITTEE HEARINGS AND ACTION

Representatives from the Department of Commerce testified on H.R. 7105 before the full committee on May 5, 1965. The equivalent of 6 days of hearings were held before the Subcommittee on International Trade between May 13 and 20, during which representatives from the Department of State and the Department of Commerce, as well as public witnesses, testified on H.R. 7105, H.R. 627, H.R. 4361, and others.

As a result of these hearings, the Subcommittee on International Trade recommended certain amendments, which on May 25 were adopted in the full committee and consolidated into one amendment in the nature of a substitute.

#### Analysis of the Bill and the Amendment in the Nature of a Substitute Recommended by the Committee

##### EXTENSION OF THE ACT

June 30, 1965, is the date on which the President's authority to regulate exports under the Export Control Act is scheduled to expire under existing law. The committee substitute changes that date to June 30, 1969, but does not change the provisions of existing law for the termination of authority under the Act on any prior date which may be designated by the President or by concurrent resolution of the Congress. The introduced bill would have repealed section 12 of the Act, thereby eliminating all three provisions for the termination of authority.

##### CIVIL PENALTY PROVISIONS

Section 2 of the bill, both as introduced and as amended, amends section 5 of the Act to authorize the administrative imposition of a civil penalty not exceeding \$1,000 for any violation of the Act or any regulation, order, or license issued under it. The committee amend-

ment differs from the introduced bill in two major respects. First, the introduced bill would have left to legal implication the power to collect a fine by means of the administrative sanction of withholding or suspending export licenses or privileges until the fine is paid. Under existing law, licenses may be revoked for any infraction, and the imposition of a fine would normally be a milder sanction. It was felt by the committee, however, that the legal power to confront an offender with the alternatives of either paying the monetary penalty or losing his license is too important a feature of the statutory scheme to be left to implication. It was also felt desirable to limit to a maximum of 1 year the period for which export privileges may be withheld as a means of collecting a penalty. The monetary penalties authorized by this bill are not intended to deal with serious and flagrant violations.

The other major change made by the committee in the civil penalty provisions was to clarify the rights of persons who wish to contest in court the imposition of any such penalty. In the case of a person who does not pay the penalty, either voluntarily or to prevent the suspension of his export privileges, the amended bill provides that the Government may collect only by a civil action in which the court is to determine de novo all issues necessary to the establishment of liability. It is possible that the courts might have reached this result under the language of the introduced bill providing that the "amount of any penalty \* \* \* shall be recoverable in a civil suit in the name of the United States," but this is by no means certain.

#### SUITS FOR REFUND BARRED

The practical utility of the power to impose a monetary penalty or suspension of license in the alternative might be seriously compromised if the offender could pay the fine in order to get his license back and then, at his leisure, sue for refund of the fine under section 1346(a) of title 28. In order to preclude that possibility, the committee amendment provides that no suit for refund may be brought in any court. The head of the department or agency concerned is given a discretionary power to refund penalties on the ground of a material error of fact or law.

The amended bill makes no change in existing law with respect to the scope and availability of judicial review of administrative action heretofore authorized under the Export Control Act. All the bill does with respect to judicial review is to specify the duty of the court to make a de novo determination of liability in any action brought to collect the proposed new civil monetary penalty.

#### COMPROMISES ARE AUTHORIZED

The introduced bill contained a subsection expressly authorizing the "head of any department or agency \* \* \* [to] compromise and settle any administrative proceeding \* \* \* upon payment of a sum not to exceed \$1,000 \* \* \*." This subsection was dropped. It was felt that it added nothing to the administrative authority, as the penalties in question may be imposed "either in addition to or in lieu of" other and presumably more severe sanctions, and thus there is ample authority to reach compromises in fact. The retention of this subsection might well raise more questions than it would answer.

For example, it would render problematical the scope of the issues in an action to collect a civil penalty agreed upon, or alleged to have been agreed upon, by way of compromise.

Both the introduced and the amended bill contain provisions disclaiming any legislative intention to limit the availability of other administrative remedies, the authority to compromise and settle administrative proceedings, or the authority to compromise, remit, or mitigate seizures and forfeitures pursuant to an act relating to the illegal exportation of war materials (22 U.S.C. 401).

#### FIVE-YEAR STATUTE OF LIMITATIONS

Neither the introduced nor the amended bill prescribes any period following an offense within which the civil penalty must be imposed. It is intended that the general 5-year limitation imposed by section 2462 of title 28 shall govern. Under that section, the time is reckoned from the commission of the act giving rise to the liability, and not from the time of imposition of the penalty, and it is applicable to administrative as well as judicial proceedings.

#### ANTI-BOYCOTT PROVISIONS

Section 2 of the Export Control Act now consists of three paragraphs setting forth the general policies to be promoted by the Act. Section 3 of the amended bill makes certain technical amendments for convenience of reference, and adds a fourth paragraph declaring it to be "the policy of the United States to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States."

The legal powers of the President to prohibit or regulate exports are conferred by section 3 of the Act. They are expressed in terms which limit their exercise to the effectuation of the policies set forth in section 2. Without an amendment to section 2, it is questionable whether the administration would have the legal power under the Export Control Act to protect American business firms from competitive pressures to respond to foreign inquiries in implementation of a boycott, much less to protect American firms from competitive pressures to join in such a boycott.

If the amendment recommended by the committee is enacted, it is believed that the administration will have an adequate legal basis for taking such action under section 3 as it may deem appropriate and effective in coping with any given situation. The amendment does not tie the hands of the administration by making any particular course of action mandatory.

#### THE "INFORMATION" AMENDMENT

Section 3(a) of the Act now empowers the President, to effectuate the policies set forth in section 2, to prohibit or regulate exports of "any articles, materials, or supplies, including technical data." In a world where trade may be and often has been used as a weapon, the committee felt that there could be many kinds of information other than technical data which might be used by foreign powers in a manner inimical to the United States, and that the administration's power ought not to be so restricted. Accordingly, section 4 of the

committee substitute amends section 3(a) of the Act by changing "technical data" to read "information", and makes conforming amendments to certain provisions of sections 4(a) and 5(b) which relate back to 3(a).

The word "information" is used without modifiers to emphasize that the broadest possible meaning is intended. It means information of any character whatever, whether or not related to any verifiable event, regardless of the subject matter, and irrespective of the mode of recordation or transmission. There can be no doubt that, as used here, the word fully encompasses both "technical data," which it replaces, as well as any kind of information relating to commercial transactions, personnel policies, and business relationships, although it is by no means limited to those categories. If the amendment made to section 3 of the Act should furnish the President with a cold-war weapon which may on occasion be used, perhaps through agencies other than the Department of Commerce, in connection with matters unrelated to boycotts or even to mercantile transactions, that result would be neither wholly unintended nor necessarily undesirable.

#### LEGISLATIVE AND CONSTITUTIONAL LIMITATIONS

The extension of the potential reach of section 3 should not, however, obscure the legislative and other limitations upon its actual exercise. The amendment to that section does not prohibit the exportation of anything. What it does do, taken in context, is to empower the President, upon a determination that the exportation of a particular kind of information would be contrary to one or more of the policies set forth in section 2, to prohibit the exportation of that kind of information to the extent necessary to effectuate those policies. There is ample precedent under other laws, of course, for prohibiting the furnishing or requiring of certain types of information, e.g., pricing data among competitors, religious or racial data in connection with employment applications or voter registration, and so on. Moreover, the implementation of the legislation must be carried out within the limitations imposed by the Constitution. Nothing in this bill is to be construed as a license to violate the sanctity of the mails, as a curb upon First Amendment freedoms, or as a denial of due process. In summary, if the committee substitute is enacted, section 2 of the Export Control Act will set forth policies which define legitimate objectives of governmental action, and section 3 will afford constitutional means for the attainment of those objectives.

## CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**The Export Control Act of 1949 (50 U.S.C. App. 2021-2032)**

AN ACT To provide for continuation of authority for the regulation of exports,  
and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Export Control Act of 1949".*

## FINDINGS

(a) Certain materials continue in short supply at home and abroad so that the quantity of United States exports and their distribution among importing countries affect the welfare of the domestic economy and have an important bearing upon the fulfillment of the foreign policy of the United States.

(b) The unrestricted export of materials without regard to their potential military and economic significance may adversely affect the national security of the United States.

## DECLARATION OF POLICY

SEC. 2. (1) The Congress hereby declares that it is the policy of the United States to use export controls to the extent necessary [(a)] (A) to protect the domestic economy from the excessive drain of scarce materials and to reduce the inflationary impact of abnormal foreign demand; [(b)] (B) to further the foreign policy of the United States and to aid in fulfilling its international responsibilities; and [(c)] (C) to exercise the necessary vigilance over exports from the standpoint of their significance to the national security of the United States.

(2) The Congress further declares that it is the policy of the United States to formulate, reformulate, and apply such controls to the maximum extent possible in cooperation with all nations with which the United States has defense treaty commitments, and to formulate a unified commercial and trading policy to be observed by the non-Communist-dominated nations or areas in their dealings with the Communist-dominated nations.

(3) The Congress further declares that it is the policy of the United States to use its economic resources and advantages in trade with Communist-dominated nations to further the national security and foreign policy objectives of the United States.

(4) *The Congress further declares that it is the policy of the United States to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States.*

## AUTHORITY

SEC. 3. (a) To effectuate the policies set forth in section 2 hereof, the President may prohibit or curtail the exportation from the United States, its Territories, and possessions, of any articles, materials, or supplies, including [technical data] information, except under such rules and regulations as he shall prescribe. To the extent necessary to achieve effective enforcement of this Act, such rules and regulations may apply to the financing, transporting, and other servicing of exports and the participation therein by any person. Such rules and regulations shall provide for denial of any request or application for authority to export articles, materials, or supplies, including [technical data] information, from the United States, its territories and possessions, to any nation or combination of nations threatening the national security of the United States, if the President shall determine that such export makes a significant contribution to the military or economic potential of such nation or nations which would prove detrimental to the national security and welfare of the United States.

(b) The President may delegate the power, authority, and discretion conferred upon him by this Act to such departments, agencies, or officials of the Government as he may deem appropriate.

(c) The authority conferred by this section shall not be exercised with respect to any agricultural commodity, including fats and oils, during any period for which the supply of such commodity is determined by the Secretary of Agriculture to be in excess of the requirements of the domestic economy, except to the extent required to effectuate the policies set forth in [clause (b) or clause (c) of section 2 hereof] *section 2(1)(B) or 2(1)(C) of this Act.*

## CONSULTATION AND STANDARDS

SEC. 4. (a) In determining [which articles, materials, or supplies] *what* shall be controlled hereunder, and in determining the extent to which exports [thereof] shall be limited, any department, agency, or official making these determinations shall seek information and advice from the several executive departments and independent agencies concerned with aspects of our domestic and foreign policies and operations having an important bearing on exports.

(b) In authorizing exports, full utilization of private competitive trade channels shall be encouraged insofar as practicable, giving consideration to the interests of small business, merchant exporters as well as producers, and established and new exporters, and provisions shall be made for representative trade consultation to that end. In addition, there may be applied such other standards or criteria as may be deemed necessary by the head of such department or agency, or official to carry out the policies of this Act.

## VIOLATIONS

SEC. 5. (a) Except as provided in subsection (b) of this section, in case of any violation of any provision of this Act or any regulation, order, or license issued hereunder, the violator or violators, upon conviction, shall be punished by a fine of not more than \$10,000 or by imprisonment for not more than one year, or by both such fine and imprisonment. For a second or subsequent offense, the offender shall



be punished by a fine of not more than three times the value of the exports involved or \$20,000, whichever is greater, or by imprisonment for not more than five years, or by both such fine and imprisonment.

(b) Whoever willfully exports [any material] *anything* contrary to any provision of this Act or any regulation, order, or license issued hereunder, with knowledge that such exports will be used for the benefit of any Communist-dominated nation, shall be punished by a fine of not more than five times the value of the exports involved or \$20,000, whichever is greater, or by imprisonment for not more than five years, or by both such fine and imprisonment.

(c) *The head of any department or agency exercising any functions under this Act, or any officer or employee of such department or agency specifically designated by the head thereof, may impose a civil penalty not to exceed \$1,000 for each violation of this Act or any regulation, order, or license issued under this Act, either in addition to or in lieu of any other liability or penalty which may be imposed.*

(d) *The payment of any penalty imposed pursuant to subsection (c) may be made a condition, for a period not exceeding one year after the imposition of such penalty, to the granting, restoration, or continuing validity of any export license, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed.*

(e) *Any amount paid in satisfaction of any penalty imposed pursuant to subsection (c) shall be covered into the Treasury as a miscellaneous receipt. The head of the department or agency concerned may, in his discretion, refund any such penalty, within two years after payment, on the ground of a material error of fact or law in the imposition. Notwithstanding section 1346(a) of title 28 of the United States Code, no action for the refund of any such penalty may be maintained in any court.*

(f) *In the event of the failure of any person to pay a penalty imposed pursuant to subsection (c), a civil action for the recovery thereof may, in the discretion of the head of the department or agency concerned, be brought in the name of the United States. In any such action, the court shall determine de novo all issues necessary to the establishment of liability. Except as provided in this subsection and in subsection (d), no such liability shall be asserted, claimed, or recovered upon by the United States in any way unless it has previously been reduced to judgment.*

(g) *Nothing in subsection (c), (d), or (f) shall limit—*

*(1) the availability of other administrative or judicial remedies with respect to violations of this Act or any regulation, order, or license issued under this Act,*

*(2) the authority to compromise and settle administrative proceedings brought with respect to violations of this Act or any regulation, order, or license issued under this Act, or*

*(3) the authority to compromise, remit, or mitigate seizures and forfeitures pursuant to section 1(b) of title VI of the Act of June 15, 1917 (22 U.S.C. 401(b)).*

#### ENFORCEMENT

SEC. 6. (a) To the extent necessary or appropriate to the enforcement of this Act, the head of any department or agency exercising any functions hereunder (and officers or employees of such department or agency specifically designated by the head thereof) may make such

investigations and obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises, or property of, and take the sworn testimony of, any person. In addition, such officers or employees may administer oaths or affirmations, and may by subpoena require any person to appear and testify or to appear and produce books, records, and other writings, or both, and in case of contumacy by, or refusal to obey a subpoena issued to, any such person, the district court of the United States for any district in which such person is found or resides or transacts business, upon application, and after notice to any such person and hearing shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 (27 Stat. 443), shall apply with respect to any individual who specifically claims such privilege.

(c) No department, agency, or official exercising any functions under this Act shall publish or disclose information obtained hereunder which is deemed confidential or with reference to which a request for confidential treatment is made by the person furnishing such information unless the head of such department or agency determines that the withholding thereof is contrary to the national interest.

#### EXEMPTION FROM ADMINISTRATIVE PROCEDURE ACT

SEC. 7. The functions exercised under this Act shall be excluded from the operation of the Administrative Procedure Act (60 Stat. 237), except as to the requirements of section 3 thereof.

#### QUARTERLY REPORT

SEC. 8. The head of any department or agency, or official exercising any functions under this Act shall make a quarterly report, within forty-five days after each quarter, to the President and to the Congress of his operations hereunder.

#### DEFINITION

SEC. 9. The term "person" as used herein shall include the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof.

#### EFFECT ON OTHER ACTS

SEC. 10. The Act of February 15, 1936 (49 Stat. 1140), relating to the licensing of exports of tin-plate scrap, is hereby superseded; but nothing contained in this Act shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodity.

## EFFECTIVE DATE

SEC. 11. This Act shall take effect February 28, 1949, upon the expiration of section 6 of the Act of July 2, 1940 (54 Stat. 714), as amended. All outstanding delegations, rules, regulations, orders, licenses, or other forms of administrative action under said section 6 of the Act of July 2, 1940, shall, until amended or revoked, remain in full force and effect, the same as if promulgated under this Act.

## TERMINATION DATE

SEC. 12. The authority granted herein shall terminate on June 30, [1965] 1969, or upon any prior date which the Congress by concurrent resolution or the President may designate.

## SUPPLEMENTAL VIEWS TO ACCOMPANY H.R. 7105

We compliment the committee for adopting a very clear declaration of policy against restrictive trade practices and boycotts. The language as added to the bill by the subcommittee amendment is the exact language of the declaration of policy contained in about 60 bills that were introduced in both Houses of Congress.

Unfortunately, the bill, as reported to the House, does not go far enough because it fails to implement this declaration of policy.

It is important to keep clearly in mind that the State Department and the Commerce Department both testified before committees in both Houses of Congress that the declaration of policy is in accord with American principles and they went so far as to say they deplored the Arab boycott and the restrictive trade practices indulged in by some of the Arab countries and that such conduct is to be condemned.

Nevertheless, they have also indicated that on their so-called case-by-case review of complaints against this boycott and these restrictive trade practices, they have done little or nothing. Their testimony before the committees of both Houses indicates that even if we adopt this declaration of policy, they do not intend to change their practice, but will continue to review these matters on a case-by-case doing what they think may be indicated should be done in each case.

This will be deliberately flying in the face of the intent of the Congress and of the best American practices. The testimony clearly indicates that when a large bank or a large company applies to the State Department or the Commerce Department for help in connection with these boycott practices, representations are made on their behalf to the Arab governments concerned and relief is obtained. But when small merchants make complaints to the Departments and seek help, they get a lot of doubletalk and are told either to comply or to lose their right to do business in these other countries.

This is a double standard that the Congress must not permit to exist. The only way we can stop it is by adopting implementing language.

The language as contained in the various bills seeking to amend the Export Control Act was quite broad. The amendment offered in the committee, which was defeated by a vote of 14 to 11 with 1 member voting present and 7 members being absent, is not as broad as that contained in the original amendments. It now meets the objection raised by the executive departments, that if the language as originally proposed were adopted, it would possibly prohibit Americans from even courteously responding to requests and indicating that the American law prohibits their giving any detailed information.

The amendment as offered in the committee and which will be offered on the floor takes that possibility into account and requires only that the rules and regulations to be adopted pursuant to the

declaration of policy, in order to implement the declaration of policy, shall prohibit the furnishing of information or the signing of agreements inconsistent with the declaration of policy. No one can or should object to that.

As a matter of fact, as has been repeatedly pointed out, an American employer or an American firm is prohibited by law from asking what one's religion is, what his race is, what his place of origin may be or that of his ancestors. Despite such prohibitions in existing law, the practices of the State Department and the Commerce Department give permission, if not direction, to Americans to answer to foreigners the very questions which they are prohibited from asking of or answering to other Americans.

This is an intolerable situation and it should be stopped at the earliest possible moment.

It could be stopped by action of the Commerce Department or of the State Department without this legislation.

Obviously, they have not stopped doing it and have no intention of stopping this practice, unless we direct it by appropriate legislation. We urge the enactment of such appropriate legislation.

The language of the amendment, which we will offer and support on the floor of the House, will simply read:

Such rules and regulations shall prohibit the furnishing of information or the signing of agreements inconsistent with the section 2(4) hereof.

Section 2(4) is the declaration of policy adopted by the committee which reads:

The Congress further declares that it is the policy of the United States to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States.

ABRAHAM J. MULTER.  
WILLIAM A. BARRETT.  
HENRY S. REUSS.  
FERNAND ST GERMAIN.  
HENRY B. GONZALEZ.  
JOSEPH G. MINISH.  
BERNARD F. GRABOWSKI.  
RICHARD L. OTTINGER.  
WILLIAM B. WIDNALL.  
PAUL A. FINO.  
FLORENCE P. DWYER.  
SEYMOUR HALPERN.  
JAMES HARVEY.  
W. E. (BILL) BROCK.  
DEL CLAWSON.  
ALBERT W. JOHNSON.  
J. WILLIAM STANTON.

## ADDITIONAL VIEWS OF REPRESENTATIVE LEONOR K. SULLIVAN

I have been deeply concerned over the efforts of the Arab nations since 1948 to destroy Israel militarily or strangle her economy through economic boycotts and harassments. After reviewing the testimony on this legislation and the committee majority's report, it is my understanding that the bill, as amended, would provide the President with full authority—which he does not now possess—to prohibit American firms from answering questionnaires or other requests for information from Arab countries intended to further the economic boycott of Israel.

Under the Constitution, the President is charged with the responsibility for carrying out the foreign policy of the United States. With the additional authority provided in this legislation, he would be empowered to take effective action to prevent foreign countries from requiring American firms to participate in a boycott aimed at any friendly nation. The legislation does not require the President to take such action if he deems it not in the best interests of the United States in a particular situation; it does, however, empower him to act when, and under circumstances, he considers such action to be in the best interests of the United States.

## ADDITIONAL VIEWS OF REPRESENTATIVE SEYMOUR HALPERN

In addition to my general agreement with the supplemental views accompanying H.R. 7105, I do wish to offer some further commentary as to the action of the International Trade Subcommittee and the whole committee in affirming the former's course.

I share the disappointment and apprehension regarding the failure of the committee to include strict protective language against restrictive trade practices and boycotts.

The hearings before the subcommittee, on which I serve, underlined the need for explicit language which would determine a proper course for the Nation in dealing with boycotts. The amendment which I offered to accomplish this was not approved.

My objective remains the enactment of definitive terms outlining the responsibility of the Commerce and State Departments, as well as American firms, in effectuating our intent not to cooperate with foreign boycotts.

However, I do wish to point out that the declaration of policy written into the bill by our subcommittee asserts our firm opposition to boycotts, and hence passive acquiescence would, in my opinion, violate section 2(4).

Similarly, in section 3(a), the term "technical data" was changed to "information" during the subcommittee's deliberations. This clearly relates to the eliciting of any material by foreign boycott offices which facilitates operation of the boycott, contrary to the declaration of policy.

The substitution of the term "information" for "technical data" by the subcommittee was motivated by the language of section 2(4), declaring the Congress in opposition to restrictive trade practices or boycotts. While Presidential discretion is left wholly intact, I do want to stress that the amendments to the bill by no means constitute a meaningless mirage which the executive agencies may ignore at will.

While the obligation to implement the policy declaration in some form is quite obvious, the Congress must set forth its criteria if we are to expect the effective, affirmative response which is necessary.

I strongly urge the adoption of further explanatory language which will clarify the responsibility to implement the declaration of policy. We should make clear that certain actions are prohibited because they are inconsistent with section 2(4). The Congress, by enacting a strong declaration of policy, should clearly define the terms by which it expects the boycotts to be opposed.

## APPENDIX

*Note.—The following material is reproduced for the information of members substantially in the form in which it was supplied to the committee by the Department of Commerce.*

### MAJOR PROVISIONS OF THE EXPORT CONTROL ACT OF 1949

The Export Control Act of 1949<sup>1</sup> authorizes the President to prohibit or to curtail the exportation from the United States, its territories, or possessions of any articles, materials, or supplies, including technical data. Rules and regulations may be issued, which may apply to financing, transporting, or other servicing of exports or participation therein, to the extent necessary to achieve effective enforcement. The Act declares it to be the policy of the United States to use export controls—

to the extent necessary (a) to protect the domestic economy from the excessive drain of scarce materials and to reduce the inflationary impact of abnormal foreign demand; (b) to further the foreign policy of the United States and to aid in fulfilling its international responsibilities; and (c) to exercise the necessary vigilance over exports from the standpoint of their significance to the national security of the United States.

The Act directs the agency exercising the authority to seek information and advice from executive departments and independent agencies concerned with the exports involved; to use private competitive trade channels as far as practicable; and to consult with all branches of the trade concerned. Fines and imprisonment are provided for violation of the Act or of any regulation, order, or license issued under it. The Act includes investigatory powers; a provision for confidential treatment of information received under it; an exemption from all but section 3 of the Administrative Procedure Act; and a requirement that quarterly reports be made to the Congress.

The committee and the Congress have been kept informed of the activities of the executive branch under the Export Control Act of 1949 by these quarterly reports of the Secretary of Commerce, of which the most recent is the 70th quarterly report, dated January 4, 1965, covering the fourth quarter of 1964.

<sup>1</sup> The Export Control Act of 1949 (Public Law 11, 81st Cong., 63 Stat. 7; 50 U.S.C. App. 2021), approved Feb. 26, 1949, codified and reenacted the previous laws which had enabled the executive branch to regulate exports, beginning with sec. 6 of the act of July 2, 1940 (54 Stat. 714). The original Export Control Act of 1949 ran to June 30, 1951. It was extended to June 30, 1953, by Public Law 33, 82d Cong. (65 Stat. 43), to June 30, 1956, by Public Law 62, 83d Cong. (67 Stat. 62), to June 30, 1958, by Public Law 631, 84th Cong. (70 Stat. 407), to June 30, 1960, by Public Law 85-466 (72 Stat. 220), to June 30, 1962, by Public Law 86-464 (74 Stat. 130), and to June 30, 1965, by Public Law 87-515, 87th Cong. (76 Stat. 127).



## SECURITY CONTROLS AND SHORT SUPPLY CONTROLS

The controls which have been exercised under the Export Control Act of 1949 are basically of two types—security and short supply.

Security export controls are designed to regulate, and where appropriate to stop entirely, the flow of strategic commodities moving directly or indirectly to the Sino-Soviet bloc or the other unfriendly nations.

Short supply controls have been exercised in order to carry out the policy of protecting the domestic economy from any excessive drain on any scarce materials. At the present time, no materials are subject to control under the Export Control Act of 1949 on the basis of domestic short supplies. However, the Department of Commerce keeps a careful watch over exports of commodities so as to be in a position to act promptly to prevent any sudden excessive drain from impairing the domestic economy.

The principal security controls on exports from the United States at the present time consist of (1) an embargo on exports to Communist China, North Korea, and North Vietnam; (2) an embargo on exports to Cuba; (3) broad and stringent controls over exports to the U.S.S.R. and other Eastern European countries in the Soviet bloc; and (4) limited controls over exports to the free world in order to protect against the diversion or transshipment of exports to the Soviet bloc.

## ADMINISTRATION OF EXPORT CONTROLS

The principal functions of the President under the act have been delegated to the Secretary of Commerce. This delegation was reiterated in Executive Order 10945 of May 24, 1961. Coordination of these controls with other agencies and with other governments is obtained through a number of communities and groups.

Within the U.S. Government, three principal committees have been established to assist the Secretary of Commerce in carrying out his functions. (1) The Operating Committee consists of top staff level representatives of the Departments of Agriculture, Commerce, Defense, Interior, State, and Treasury, and of the Federal Aviation Agency, the National Aeronautics and Space Administration, the Atomic Energy Commission, and the Office of Emergency Planning. The Chairman of this group is the Director of the Export Policy Staff of the Commerce Department, who makes recommendations to the Assistant Secretary of Commerce for Domestic and International Business on the basis of information provided by the group. (2) The Advisory Committee on Export Policy consists of representatives of the same departments as the Operating Committee, but at a rank no less than Assistant Secretary or Deputy Assistant Secretary; the Assistant Secretary of Commerce for Domestic and International Business is the Chairman of the Advisory Committee. (3) The Export Control Review Board was established by President Kennedy by Executive Order 10945 of May 24, 1961. The Secretary of Commerce is Chairman, and the Secretaries of Defense and State are also members. Other departments or agencies may participate when appropriate.

In addition to these special committees, matters relating to export control and the administration of the Export Control Act may come before the National Security Council.

Coordination of U.S. export control policies with those of Western Europe, Canada, and Japan is obtained through a consultative group and a coordinating committee (also called Cocom) established in 1949 and 1950, in which the following countries participate: United States, Belgium, Canada, Denmark, France, Greece, Italy, Japan, Luxembourg, Netherlands, Norway, Portugal, Turkey, United Kingdom, and West Germany.

#### THE COMMODITY CONTROL LIST

The principal mechanism used by the Department of Commerce in administering its export control authority is a list of all commodities exported from the United States which is called the Commodity Control List. The export control applicable to each commodity on this Commodity Control List; i.e., whether a validated license is required for exportation to a particular destination or whether exportation is authorized under a general license, may be determined by reference to letter symbols representing different country groups set opposite each entry in the List.

If the country group symbol for a particular country is set forth opposite the commodity a validated license is required for its exportation to any country in that group. If the country group symbol is not set forth opposite the commodity, exportations may be made to any country in the group without the necessity of obtaining validated licenses. All foreign destinations (except Canada which is referred to as an individual destination) are set up in six country groupings bearing the symbols T, V, W, X, Y, and Z. Country Group T comprises the Western Hemisphere excluding Cuba and is the area to which the least controls are applied; Group Z comprises Communist China, North Korea, North Viet Nam, Cuba, and the Pacific Region of the U.S.S.R. and is the area to which the most stringent controls are applied. Group W includes Poland and Rumania; Group X is Hong Kong and Macao; Group Y contains the Eastern European countries; and Group V comprises all other countries not in any other country group.

Most exports to the U.S.S.R. and other Eastern European countries must be specifically authorized by a validated license, although a number of nonstrategic goods may be exported under general license. With respect to Poland and Rumania however trade has been significantly freed and in the area of nonstrategic goods controls are essentially the same as to the free world areas.

For those commodities requiring a specific validated license, the license is granted only when it is determined that the export would be consistent with the national security and foreign policy taking into consideration the particular item, the quantity, and use to which it will be put in the country of destination.

The Act gives the President wide discretion to limit, restrict, or prohibit entirely exports to any person or to any nation of any or all commodities or articles, including technical data whether or not, and to whatever extent they are of military, industrial, or economic sig-

nificance, if limitation, restriction, or prohibition is found to be in the interest of our national security or our foreign policy or necessary because of domestic shortages. The Act is not limited to strategic materials or to critical material or to essential commodities. It will support a total embargo or the mildest of restrictions. The requirements of foreign policy, national security, and domestic shortages are the only tests.

#### ENFORCEMENT AND COMPLIANCE

The Department of Commerce has undertaken an extensive program to enforce the Act and regulations issued under it. Both civil and criminal penalties as well as administrative remedial sanctions have been invoked against violators of the regulations. Under the Act, violators may be punished by fine and imprisonment. Under the regulations, provision has been made for denying U.S. export privileges to American and foreign countries and individuals pursuant to administrative compliance proceedings instituted in connection with violations of the export regulations. In addition, the customs collectors have authority to seize and have forfeited goods being exported contrary to the export regulations. For example, during the past 3 years, 94 temporary indefinite and final export denial orders were issued against more than 253 American and foreign individuals and companies for various kinds of violations of the export regulations, including 86 orders involving actual or attempted transshipments to the Sino-Soviet bloc or Cuba. During the past 3 years, 1,129 seizures were made by the Bureau of Customs involving U.S. goods valued at more than \$2,257,864. A detailed review of the enforcement program during the past 3 years was supplied by the Commerce Department and was included in the hearings on H.R. 7105.

